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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1090 OF 2007

Sakharam Ganu Gurav Petitioner
versus
Bajirao Baburao Poyanekar & ors. Respondents

Mr.Asif Iqbal L. Patel for petitioner.
Mr.S.M.Railkar for respondents 1 to 8.

CORAM : A.S.OKA, J.

DATE : 02nd April 2007

JUDGMENT :-

1. Rule. Advocate for the respondents waives service. Taken up for hearing forthwith.

2. The challenge in this writ petition under Article 227 of the Constitution of India is to the order dated 15th November 2006 passed by the learned Trial Judge below application at Exhibit-60. The said application was filed by the petitioner-plaintiff seeking a permission to prove the Sale Deed dated 20th September 1943 by leading a secondary evidence in the form of a certified copy thereof. In the application it was contended that the Sale Deed is either lost

or it must have been produced in one of the earlier suits. The Trial Court by the impugned order has rejected the application by holding that there is nothing stated in the application to show as to what efforts the petitioner had made to get the said original document and, therefore, the ground given in the application was unacceptable.

3. Now, the suit is ready for hearing and in fact the petitioner has filed an affidavit of the examination-in-chief. As the factual contentions raised in the application at Exhibit-60 by the petitioner have been disputed by the respondents, the petitioner will have to lead evidence and establish before the Court the grounds raised in application at Exhibit-60. If the affidavit of examination-in-chief has already been filed by the petitioner, he will have to file a further affidavit dealing with the grounds made out in the application at Exhibit-60. After the cross examination of the petitioner on the basis of the said affidavit and additional affidavit, if any, is completed, the Court can be directed to decide the application at Exhibit-60 afresh.

4. Hence, the writ petition is disposed of by

passing the following order :-

(a) The impugned order dated 15th November 2006 is quashed and set aside and the application at Exhibit-60 filed by the petitioner is restored;

(b) The Trial Court will permit the petitioner to file an additional affidavit as indicated in the earlier part of this order within a period of one week from the date of production of an authenticated copy of this order;

(c) Application at Exhibit-60 shall be decided by the Trial Court afresh after completion of the cross-examination of the petitioner or at an appropriate stage thereafter;

(d) All contentions of the parties on merits of Application at Exhibit-60 are expressly kept open;

(e) Writ Petition is disposed of;

(f) All concerned including the Trial Court to act on an ordinary copy of this order duly authenticated by this Court.

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(A.S.OKA, J.)